



# FORT SILL LEGAL ASSISTANCE

## BANKRUPTCY



Bankruptcy allows debtors a financial ‘fresh start’ from debts that are overwhelming and massive. However, going through a bankruptcy is a serious choice and should not be taken lightly. Below, the two main ‘types’ of bankruptcies will be compared and contrasted.

### CHAPTER 7 BANKRUPTCY

Chapter 7 bankruptcy is often referred to as a ‘liquidated’ bankruptcy proceeding. Upon filing for bankruptcy under Chapter 7, the debtor’s non-exempt assets are gathered by the bankruptcy trustee who sells the property to make a distribution to the debtor’s creditors. The debtor is allowed to keep certain exempt property. Exempt assets include, but are not limited to, public benefits, a motor vehicle, necessary clothing, and necessary household goods. A portion of the equity in your home may also be exempt. Exempt and non-exempt assets are determined by statute. Ask a bankruptcy attorney for further clarification on exempt and non-exempt assets. In 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) went into effect. Among other things, this subjects most debtors who earn an income to a means test to determine their eligibility to file for a Chapter 7 Bankruptcy.

CHAPTER 7 BANKRUPTCY	
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>- Fast process, 4-6 months</li> <li>- Creditors no longer have a claim</li> <li>- Unpaid balances after assets are distributed are discharged</li> </ul>	<ul style="list-style-type: none"> <li>- Can lose non-exempt property</li> <li>- Not all debts discharged</li> <li>- Certain liens still in effect</li> <li>- Trustee can challenge plan as abusive</li> </ul>

### CHAPTER 13 BANKRUPTCY

Chapter 13 bankruptcy is often referred to as a ‘reorganization’ bankruptcy. When filing for Chapter 13 bankruptcy, the debtor proposes a plan to pay his creditors over a three to five year period. The plan details and repayment schedule must begin within 30 to 45 days after the case has started. A Chapter 13 plan is filed with the debtor’s Chapter 13 petition, or shortly thereafter. The plan must provide that unsecured creditors will receive as much through a Chapter 13 petition as they would receive under a Chapter 7 liquidation. Also, the plan must be approved by the creditors or the creditors must be paid in full. If neither of these conditions are met, then all of the debtor’s disposable income must be committed to the plan over the three to five year period.

## CHAPTER 13 BANKRUPTCY

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"><li>- Keep all property</li><li>- Court can allow more time than original contract to pay off debt</li><li>- No limit to how many times you can file</li></ul>	<ul style="list-style-type: none"><li>- Not completed until payment schedule is satisfied</li><li>- Limited amount can be discharged</li><li>- Still have to repay debts</li></ul>

Filing bankruptcy is a serious decision and will have a negative impact upon your credit rating as well as your ability to receive loans or additional credit. For Servicemembers, filing for bankruptcy may also result in suspension or revocation of your security clearance. Always consult with an attorney before filing for bankruptcy.

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If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Sill Legal Assistance Office is located on the 4<sup>th</sup> floor of Building 4700, Hartell Hall on Mow-Way Road.